

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 342

Citations Affected: IC 5-2; IC 34-23-2-1.

Synopsis: Compensation for victims of violent crimes and wrongful death or injury of a child. Conference committee report for ESB 342. Allows the Indiana criminal justice institute (CJI) to pay funeral, burial, or cremation expenses from the violent crime victims compensation fund (fund) for the victims of certain crimes involving motor vehicle accidents. Allows the CJI to pay funeral, burial, or cremation expenses from the fund regardless of whether the victim was married. (Current law allows the payment only if the victim was unmarried.) Increases from \$4,000 to \$5,000 the maximum amount of expenses for which the CJI may compensate a claimant from the fund for the funeral, burial, or cremation of a victim. Provides that the CJI may award compensation from the fund in connection with a violent crime if the violent crime was reported to a law enforcement officer not more than 72 hours after the occurrence of the crime. (Under current law, the time limit is 48 hours.) Provides that expenses for necessary medical and hospital services and prescription drugs must be incurred within 180 days after the crime to be compensable from the fund, but that an extension of the 180 day period may be granted under certain circumstances. Allows the CJI to compensate a crime victim for up to \$3,000 of the cost of outpatient mental health counseling related to the crime. Removes provisions requiring a sex crime victim to cooperate with law enforcement. Relocates a definition. Specifies that the law concerning the wrongful death or injury of a child: (1) does not apply to a legally performed abortion; and (2) applies to a fetus that has attained viability. Provides that the law concerning the wrongful death or injury of a child does not affect or supersede any other right, remedy, or defense provided by any other law. **(This conference committee report: (1) removes language that prohibits an owner or agent of a store from asking a person to make a statement that acknowledges that the person shoplifted in the store or waives any of the person's legal rights; and (2) inserts Engrossed Senate Bill 341 regarding wrongful death or injury of a child.)**

Effective: July 1, 2009.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 342 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Page 8, delete lines 12 through 41, begin a new paragraph and
- 2 insert:
- 3 "SECTION 8. IC 34-23-2-1, AS AMENDED BY P.L.3-2008,
- 4 SECTION 242, IS AMENDED TO READ AS FOLLOWS
- 5 [EFFECTIVE JULY 1, 2009]: Sec. 1. **(a) This section does not apply**
- 6 **to an abortion performed in compliance with:**
- 7 **(1) IC 16-34; or**
- 8 **(2) IC 35-1-58.5 (before its repeal).**
- 9 ~~(a)~~ **(b)** As used in this section, "child" means an unmarried
- 10 individual without dependents who is:
- 11 (1) less than twenty (20) years of age; or
- 12 (2) less than twenty-three (23) years of age and is enrolled in a
- 13 postsecondary educational institution or a career and technical
- 14 education school or program that is not a postsecondary
- 15 educational program.
- 16 **The term includes a fetus that has attained viability (as defined in**
- 17 **IC 16-18-2-365).**
- 18 ~~(b)~~ **(c)** An action may be maintained under this section against the
- 19 person whose wrongful act or omission caused the injury or death of a
- 20 child. The action may be maintained by:
- 21 (1) the father and mother jointly, or either of them by naming the
- 22 other parent as a codefendant to answer as to his or her interest;

(2) in case of divorce or dissolution of marriage, the person to whom custody of the child was awarded; and

(3) a guardian, for the injury or death of a protected person.

~~(c)~~ **(d)** In case of death of the person to whom custody of a child was awarded, a personal representative shall be appointed to maintain the action for the injury or death of the child.

~~(d)~~ **(e)** In an action brought by a guardian for an injury to a protected person, the damages inure to the benefit of the protected person.

~~(e)~~ **(f)** In an action to recover for the death of a child, the plaintiff may recover damages:

(1) for the loss of the child's services;

(2) for the loss of the child's love and companionship; and

(3) to pay the expenses of:

(A) health care and hospitalization necessitated by the wrongful act or omission that caused the child's death;

(B) the child's funeral and burial;

(C) the reasonable expense of psychiatric and psychological counseling incurred by a surviving parent or minor sibling of the child that is required because of the death of the child;

(D) uninsured debts of the child, including debts for which a parent is obligated on behalf of the child; and

(E) the administration of the child's estate, including reasonable attorney's fees.

~~(f)~~ **(g)** Damages may be awarded under this section only with respect to the period of time from the death of the child until:

(1) the date that the child would have reached:

(A) twenty (20) years of age; or

(B) twenty-three (23) years of age, if the child was enrolled in a postsecondary educational institution or in a career and technical education school or program that is not a postsecondary educational program; or

(2) the date of the child's last surviving parent's death;

whichever first occurs.

~~(g)~~ **(h)** Damages may be awarded under subsection ~~(c)(2)~~ **(f)(2)** only with respect to the period of time from the death of the child until the date of the child's last surviving parent's death.

~~(h)~~ **(i)** Damages awarded under subsection ~~(c)(1)~~, ~~(c)(2)~~, ~~(c)(3)(C)~~, **(f)(1)**, **(f)(2)**, **(f)(3)(C)**, and ~~(c)(3)(D)~~ **(f)(3)(D)** inure to the benefit of:

(1) the father and mother jointly if both parents had custody of the child;

(2) the custodial parent, or custodial grandparent, and the noncustodial parent of the deceased child as apportioned by the court according to their respective losses; or

(3) a custodial grandparent of the child if the child was not survived by a parent entitled to benefit under this section.

However, a parent or grandparent who abandoned a deceased child while the child was alive is not entitled to any recovery under this chapter.

(j) This section does not affect or supersede any other right, remedy, or defense provided by any other law.

SECTION 9. [EFFECTIVE JULY 1, 2009] IC 34-23-2-1, as

1 **amended by this act, applies only to a cause of action that accrues**
2 **after June 30, 2009."**

(Reference is to ESB 342 as reprinted March 24, 2009.)

Conference Committee Report
on
Engrossed Senate Bill 342

Signed by:

Senator Becker
Chairperson

Representative Lawson L

Senator Lanane

Representative Van Haaften

Senate Conferees

House Conferees